No. [redacted]-53

In the Supreme Court of the United States

October Term, 1953

UNITED STATES OF AMERICA, APPELLANT,

vs.

[redacted]

[redacted]

STATEMENT AS TO JURISDICTION

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 74-81

UNITED STATES OF AMERICA, PLAINTIFF

v.

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., INTERNATIONAL BOXING CLUB, MADISON SQUARE GARDEN CORPORATION, JAMES D. NORRIS AND ARTHUR M. WIRTZ, DEFENDANTS

STATEMENT AS TO JURISDICTION

In compliance with Rule of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause on February 8, 1954. A petition for appeal is presented to the district court herewith, to-wit, on this 12th day of March, 1954.

OPINION BELOW

The district court did not render a written opinion. At the conclusion of argument on defendants' motion to dismiss the complaint, the court ruled that it would grant the motion, but the reasons which it gave for this ruling were not transcribed.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U.S.C. 29, as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869.

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

United States v. *Women's Sportswear Mfg. Assn.*, 336 U.S. 460;

United States v. *New Wrinkle, Inc.*, 342 U.S. 371.

QUESTIONS PRESENTED

1. Whether, under the facts stated in the complaint, the decision in *Toolson* v. *New York Yankees*, 346 U.S. 356, is controlling as to the application of the Sherman Act to the acts and conduct charged against the defendants—restraint and monopolization, on a multi-state basis, of the promotion, exhibition, broadcasting, telecasting, and motion-picture production and distribution of professional championship boxing contests.

2. Whether the acts of the defendants, as stated in the complaint, constitute "trade or commerce among the several States" within the meaning of Sections 1 and 2 of the Sherman Act.

STATUTE INVOLVED

The pertinent provisions of Sections 1, 2, and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended

(15 U.S.C. 1, 2, 4), commonly known as the Sherman Act, are as follows:

> Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *.
>
> Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.
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> * * * * *
>
> Sec. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *

STATEMENT

In this civil action under Section 4 of the Sherman Act the complaint charges (par. 17) that since early in 1949 the defendants have been conspiring to restrain and to monopolize, and have

been monopolizing, interstate commerce in the promotion, exhibition, broadcasting, telecasting, and motion-picture production and distribution, of professional championship boxing contests.[1] Shortly after the decision in *Toolson* v. *New York Yankees*, 346 U.S. 356, the defendants filed a motion to dismiss the complaint upon the authority of that decision. Following submission of briefs and oral argument, the district court granted this motion.

The following facts stated in the complaint, which are taken as true on the motion to dismiss, are believed pertinent:

The corporate defendants are International Boxing Club of New York, Inc., International Boxing Club, and Madison Square Garden Corporation, which will be respectively referred to as IBC (N.Y.), IBC(Ill.), and Garden. The two individual defendants, James D. Norris and Arthur M. Wirtz, together with Garden, own 80% of the stock of IBC(N.Y.) and of IBC (Ill.). (Pars. 3-9.)

A professional boxer greatly enhances his earning power if he obtains recognition as "world champion" of the weight division in which he competes, and, for the promoter, championship contests are more remunerative than other boxing contests (par. 11).

Substantially all of the revenue which a promoter derives from championship contests comes from

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[1] A copy of the complaint as originally filed is attached hereto as Appendix A. A copy of paragraph 16(a) of the complaint, which was added by stipulation of the parties, is attached hereto as Appendix B.

either tickets of admission or sale of television, radio and motion-picture rights. Since 1949, sale of these rights has represented, on the average, more than 25% of the receipts from championship fights. This proportion has been progressively increasing, and in a heavyweight championship contest in May 1953 receipts from sale of these rights exceeded the receipts from tickets of admission (less federal admission taxes). (Par. 16(a).)

Defendants' conspiracy has consisted of a continuing agreement to exclude others from promoting championship boxing contests in the United States, and from selling television, radio and motion-picture rights for such contests (par. 18). In order to effectuate their conspiracy and resulting monopolization (par. 19), the defendants early in January 1949 agreed among themselves and with Joe Louis, then heavyweight champion of the world, that he would resign his title as heavyweight champion, that he would procure exclusive rights to the services of the four leading contenders for this title in a series of elimination contests which would result in recognition of a new heavyweight world champion, and that he would assign these exclusive rights to defendants (par. 20). Contracts were thereupon entered into between a corporation in which Joe Louis owned a majority of the stock and the four leading contenders for his title, and these contracts, which granted said corporation the exclusive television and radio rights to broadcast the elimination contests, were assigned to IBC (Ill.) (pars. 21-22).

The defendants, as a part of their conspiracy and resulting monopolization (par. 19), have eliminated the "leading competing promoter" of championship matches (par. 23); have acquired the exclusive right to promote professional boxing contests at the principal arenas at which championship contests can be successfully presented (pars. 24-25); have required each title contender to agree that, should he win, he still, for a period of three (or sometimes five) years, take part only in title contests promoted by the defendants (par. 26); and defendants have promoted all but two of the 21 championship contests held in the United States since June 1949 (par. 27).[2]

THE QUESTIONS ARE SUBSTANTIAL

Since defendants' motion to dismiss the complaint was made and granted on the authority of *Toolson* v. *New York Yankees,* 346 U. S. 356, we first call attention to the grounds of that decision. The Court stated that it had held in 1922 in *Federal Baseball Club* v. *National League,* 259 U. S. 200, that the business of providing baseball games between clubs of professional baseball players is not within the scope of the Sherman Act; that the business had been left to develop for 30 years "on the understanding" that it was not subject to this Act; and that Congress, which had had the *Federal Baseball* ruling under consideration, had not seen fit to bring the business under the Act. These factors led the Court to conclude that, if there are evils

[2] The receipts from these 21 contests have been approximately $4,500,000 (par. 16).

in the field of organized baseball which now warrant applying the antitrust laws to it, this should be by legislation having prospective effect rather than by overruling the Court's 1922 decision "with retrospective effect."

In both the *Toolson* case and the *Federal Baseball* case, the foundation of the charge of Sherman Act violation was (1) the tightly integrated organization of all clubs having professional baseball teams, and (2) the agreement by each club to include a uniform "reserve clause" in every player contract and not to deal with any player except on the basis of the provisions of such clause and the rules adopted to implement it. There was thus practically complete identity in the Sherman Act issue presented in the two cases.

We submit that the holding of the *Toolson* case is confined to the application of the Sherman Act to organized baseball, the only issue on which the Court ruled in the *Federal Baseball* case. The *Toolson* case represents an application of the doctrine of *stare decisis* to the particular circumstances presented. It does not hold, as a matter of construction of the Sherman Act, that other activities which in one respect or another are comparable to the baseball business are for that reason outside the scope of the Act.

Over and beyond the foregoing, we submit that the business of promoting professional championship boxing contests, as conducted by the defendants during the period covered by this proceeding, has characteristics which make the *Federal Base-*

ball ruling not controlling. Telecasting and broadcasting the contests which defendants promote, and making and distributing motion pictures of these contests, are an integral part of defendants' business, being the source of about 25% of their receipts. Here the allegation is, *inter alia*, that broadcasting, telecasting and motion picture distribution are monopolized and restrained. Pars. 17, 18, 21.[3] Although the record in the *Federal Baseball* case shows that the two Major Leagues received substantial sums from sale of the right to transmit telegraphic play-by-play descriptions of Major League games, it does not appear that this was a significant or material element of the baseball business as then conducted.[4] Under the radically different facts as to the business of the present defendants, the decision in *Federal Baseball* cannot be deemed an authoritative determination that the business of these defendants is beyond the scope of the Sherman Act.

Telecasting of boxing contests involves the simultaneous transmission of the contests, by sight and sound, to hundreds of thousands of people located in virtually every state of the Union. Broadcasting by radio involves simultaneous interstate transmis-

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[3] "The contracts also provided that Enterprises, or any party or corporation designated by it, was to have the exclusive right to broadcast any of the contests, both in radio and television, and the exclusive right to arrange for the production and distribution of motion picture films of said contests" (par. 21).

[4] The telegraphic reports are not even mentioned in the opinion of this Court or in the opinion of the court of appeals (269 Fed. 681, C.A. D.C.).

sion of the sounds of the fight and audience reaction, and of the drama of the fight as conveyed by the tone and words of an eye-witness reporter of it. Making a motion picture of a fight records it in picture and sound, for subsequent reproduction of it in various states, in a form perhaps more vivid than what was seen by most of those present at the fight.

Broadcasting is trade and commerce within the meaning of the Sherman Act, and unreasonable restraint or monopolization of a part of this commerce is a violation of the Act. *Lorain Journal Co.* v. *United States*, 342 U. S. 143; *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 223. The contracts which have the effect of excluding others from the business of promoting championship boxing contests also exclude them from the broadcasting which is an integral part of this business. No comparable exclusion was ruled upon in the *Federal Baseball* case.

The Court's 1922 holding that contracts tying baseball players to a particular club (except as it might otherwise agree) did not concern interstate trade or commerce as embraced by the Sherman Act was premised on the view that the contracts were for personal effort in giving exhibitions of baseball, and that these exhibitions are purely local and involve no "transfer" of goods, persons, or "intelligence" from one state to another. The Court said that the decision by the court of appeals "went to the root of the case" (259 U. S. at p. 208). The reasoning of that court was that "trade and com-

merce require the transfer of something, whether it be persons, commodities, or intelligence, from one place or person to another"; and that a game of baseball is "local in its beginning and in its end" and "not susceptible of being transferred" (269 Fed. at pp. 684-685).[5]

The facts here show what was found to be lacking in the *Federal Baseball* case, transfer of the exhibition (or contest), by means of electric waves, to persons in other states, and recording the contest for the purpose of reproducing it, visually and orally, in motion picture theatres in various states.

We submit that the present appeal, like the appeal taken to this Court from the judgment of dismissal entered in *United States* v. *Shubert* (S.D. N.Y.), raises a substantial question concerning the scope of the *stare decisis* rule applied in the *Toolson* case. Determination by this Court of the scope of that ruling is of manifest importance both to the Government and to private litigants.

In addition, the question whether the United States is powerless to proceed under the Sherman Act against monopolistic practices in the promotion of championship boxing contests is in itself of public importance. That the field is one in which there is a wide public interest is shown by the fact that professional boxing "is almost without exception the subject of extensive regulation by state or

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[5] Since the business of the defendants was regarded as being the giving of exhibitions of baseball, the interstate transportation preceding and following the exhibitions was deemed not a part of the business which had been restrained or monopolized.

municipal athletic commissions or commissioners.[6]" Affidavits filed in this case evidence the concern of such regulatory agencies with the monpolistic practices charged in the Government's complaint. An affidavit by the chairman of the New York State Athletic Commission states: "An early determination of the legality of IBC's activities is vital to the survival of competitive professional boxing in New York." An affidavit by the Executive Secretary (and former president) of the National Boxing Association[7] states: "Independent boxing clubs throughout the United States are being forced out of business. * * * As a result of the monopoly alleged, 'package' deals are sold by defendants to advertisers, radio and television broadcasters, eliminating independent clubs or promoters from this phase of the business. The public interest in this industry is very great."

We submit that the questions presented by the appeal are substantial and of public importance.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

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[6] Defendants' district court brief on motion to dismiss (p. 6).

[7] This organization includes in its membership 94 boxing commissions, each appointed by local or state authority.

APPENDIX A

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 74-81

UNITED STATES OF AMERICA, PLAINTIFF,

v.

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., A CORPORATION OF NEW YORK; INTERNATIONAL BOXING CLUB, A CORPORATION OF ILLINOIS; MADISON SQUARE GARDEN CORPORATION, A CORPORATION OF NEW YORK; JAMES D. NORRIS; AND ARTHUR M. WIRTZ, DEFENDANTS.

Filed March 17, 1952

COMPLAINT

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this action against the defendants and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890 (c. 647, 26 Stat. 209, 15 U. S. C., Sec. 4) as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, to prevent and restrain

continuing violations by them, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. The corporate defendants, the International Boxing Club of New York, Inc. and the Madison Square Garden Corporation, maintain offices, transact business and are found within the Southern District of New York.

II

The Defendants

3. International Boxing Club of New York, Inc., a corporation organized and existing under the laws of the State of New York (hereinafter referred to as "IBC (N.Y.)"), is made a defendant herein. IBC (N.Y.) maintains its offices and its principal place of business in New York City. It is engaged, among other things, in the promotion and exhibition of professional boxing contests.

4. International Boxing Club, a corporation organized and existing under the laws of the State of Illinois (hereinafter referred to as "IBC (Ill.)"), is made a defendant herein. IBC (Ill.) maintains its offices and principal place of business at Chicago, Illinois. It is engaged, among other things, in the promotion and exhibition of professional boxing contests.

5. The Madison Square Garden Corporation (hereinafter referred to as the "Garden"), is made a defendant herein. The Garden is a corporation organized and existing under the laws of the State of New York, with its offices and principal place of business at New York City. It is engaged, among other things, in the maintenance and operation of the Madison Square Garden, the foremost sports

arena in New York City, utilized for all major indoor sports including professional boxing, with a seating capacity in excess of 18,000.

6. James D. Norris, a resident of New York City, is hereby made a defendant herein.

7. Arthur M. Wirtz, a resident of Chicago, Illinois, is hereby made a defendant herein.

8. Defendants Norris, Wirtz and the Garden, respectively, are associated with, or own stock in, or hold office in the defendants IBC (N.Y.) and IBC (Ill.), as follows:

Deft.	Garden	IBC (N.Y.)	IBC (Ill.)
Norris	Director	President, Director and owner of 20% of outstanding shares of Class A common stock	President, Director and owner of 20% of outstanding shares of Class A common stock and of 40% of outstanding shares of Class B common stock
Wirtz	Director	Director and owner of 20% outstanding shares of Class A common stock	Director and owner of 20% outstanding shares of Class A common stock and of 40% of outstanding shares of Class B common stock
Garden	—	Owner of 40% of outstanding shares of Class A common stock and of 80% of outstanding shares of Class B common stock	Owner of 20% of outstanding shares of Class A common stock

In addition to the stockholdings in IBC (N. Y.) and IBC (Ill.) described above in this paragraph, 20% of the outstanding shares of Class A common stock and 20% of the outstanding shares of Class B common stock of each corporation is owned by Truman K. Gibson, Jr. and Theodore R. Jones as trustees for Joe Louis Barrow (hereinafter called "Joe Louis").

9. IBC (N. Y.) has issued 1,000 shares of Class A stock and 100 shares of Class B stock with all shares having a par value of $1.00 per share and entitled to one vote per share. Its certificate of incorporation, as amended, provides as follows:

> No dividends shall be declared or paid with respect to any share of the Class A Stock unless there shall have been previously or contemporaneously declared and paid, or declared and set aside for payment, in the same fiscal year, the sum of $100.00 per share with respect to each outstanding share of Class B Stock for each $1.00 per share of dividend declared or paid with respect to the Class A Stock in said fiscal year, it being the intention that dividends shall be payable at the rate of $100.00 per share with respect to the Class B stock for each $1.00 per share paid with respect to the Class A Stock.

The same provision exists in the certificate of incorporation, as amended, of IBC (Ill.) which has issued the same number of shares of stock as IBC (N. Y.).

III

Nature of Trade and Commerce Involved

10. Boxers usually compete in amateur tournaments as a preliminary to becoming professionals. As amateurs they receive no pay and box under the sponsorship of local independent boxing clubs, associations or other organizations. When they become professionals, they contract to box an opponent on a per bout basis for local promoters and

receive a fee. If their skill as professional boxers results in an increasing willingness of the public to pay to view their contests, they can demand higher fees and a greater percentage of receipts from the sale of tickets and other rights. If their skill increases, they engage in preliminary and other bouts throughout the United States and eventually participate in major bouts. The fee for a major bout is usually a sum guaranteed by the promoter or a predetermined percentage of the net receipts from the sale of tickets and motion picture, radio and television rights.

1. The most lucrative asset to a professional boxer is recognition and designation by the various state athletic commissions and others as "world champion" in the division in which he competes. These divisions are:

flyweight	112 lbs.
bantamweight	118 "
featherweight	126 "
lightweight	123 "
welterweight	147 "
middleweight	160 "
light heavyweight	175 "
heavyweight	All above 175 lbs.

A "world champion" gains his title by defeating the existing champion or by eliminating all contenders, and remains world champion in his division until he is, in turn, defeated by a contender or resigns the title. Such a title affords to its holder financial returns from personal appearances and exhibitions throughout the United States, from endorsements and other activities, as well as a greater

percentage of the receipts from his bouts. The promotion of professional championship boxing contests is also more lucrative than the promotion of other boxing contests.

12. Of the various "world championships," the heavyweight division is the most important to boxers and promoters, as it returns the greatest financial benefits. The flyweight and bantamweight divisions are not of substantial importance in the United States because very few American boxers are of such light weights. No championship contest has been held in the flyweight division in the United States since 1935; none in the bantamweight division since 1947.

13. The promotion of professional championship boxing contests, in which the winners achieve "world champion" titles, includes negotiating and executing contracts with boxers for the main and preliminary bouts, arranging and maintaining training quarters, leasing suitable arenas, such as stadia or ball parks where substantial numbers of the public may be seated to view the contest, negotiating and executing contracts for the employment of matchmakers, advertising agencies, press agents, seconds, referees, judges, announcers and other personnel; organizing, assembling, and arranging other details necessary to the exhibition of the contests; selling tickets and rights to make motion pictures of the contests and to distribute them throughout the United States and in foreign countries; and selling rights to transmit the contests by radio or television throughout the United States and foreign countries.

14. Promoters of professional championship

boxing contests make a substantial utilization of the channels of interstate trade and commerce to:

(a) negotiate contracts with boxers, advertising agencies, seconds, referees, judges, announcers, and other personnel living in states other than those in which the promoters reside;

(b) arrange and maintain training quarters in states other than those in which the promoters reside:

(c) lease suitable arenas, and arrange other details for boxing contests, particularly when the contests are held in states other than those in which the promoters reside;

(d) sell tickets to contests across state lines;

(e) negotiate for the sale of and sell rights to make and distribute motion pictures of boxing contests to the 18,000 theatres in the United States;

(f) negotiate for the sale of and sell rights to broadcast and telecast boxing contests to homes through more than 3,000 radio stations and 100 television stations in the United States; and

(g) negotiate for the sale of and sell rights to telecast boxing contests to some 200 motion picture theatres in various states of the United States for display by large-screen television.

15. Motion picture films of professional championship boxing contests are distributed and exhibited in theatres throughout the United States and in foreign countries. Similarly, radio and television broadcasts of such contests are transmitted

throughout the United States and radio broadcasts of them are also transmitted to foreign countries.

16. The 21 major professional championship boxing contests promoted in the United States since June 1949 have produced a gross income from admissions and the sale of motion picture, radio and television rights of approximately $4,500,000.00. The total such gross income for all professional boxing contests in the United States during this period, including the championship contests, has been approximately $15,000,000.00.

IV

Offenses Charged

17. Beginning in or about January 1949, the exact date being unknown to the plaintiff, and continuously thereafter up to and including the date of the filing of this complaint, the defendants have been and now are engaged in an unlawful combination and conspiracy in unreasonable restraint of and to monopolize the above described interstate and foreign trade and commerce in the promotion, exhibition, broadcasting, telecasting, and motion picture production and distribution of professional championship boxing contests in the United States, and have monopolized said trade and commerce, in violation of Sections 1 and 2 of the Sherman Act. The defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this complaint is granted.

18. The aforesaid combination and conspiracy, which has resulted in the said monopolization, has consisted of a continuing agreement and concert

of action among the defendants to exclude others from the promotion and exhibition of and the sale of radio, television and motion picture rights in professional championship boxing contests in the United States.

19. To effectuate said offenses, the defendants have done those things which they combined and conspired to do, including in part the acts, means, methods, contracts, agreements and understandings hereinafter more fully set forth and described.

20. In or about January 1949 these defendants entered into understandings and agreements among themselves and with Joe Louis, then heavyweight champion of the world, under the terms of which Joe Louis agreed to retire from active boxing, resign the title of heavyweight champion of the world, procure the exclusive rights to the services of the four leading contenders for the heavyweight title in a series of elimination contests which would result in the recognition of a new heavyweight champion of the world, and assign these exclusive rights to defendants. The understandings and agreements also provided that Joe Louis was to receive $150,000 from these defendants and was to receive stock in the corporations which were to be formed by these defendants.

21. Contracts were entered into between Joe Louis Enterprises, Inc. (hereinafter referred to as "Enterprises"), an Illinois corporation in which Joe Louis owned the majority stock interest, and Joe Walcott, Ezzard Charles, Lee Savold and Gus Lesnevich, the then leading contenders for Louis' heavyweight title, on or about February 14, 1949. These contracts provided, among other

things, that the exclusive services of Walcott, Charles, Savold and Lesnevich were to be rendered to Enterprises or its assignee and that an elimination professional contest was to be conducted among them for the heavyweight championship of the world in contests staged in the United States or elsewhere throughout the world. The contracts also provided that Enterprises, or any party or corporation designated by it, was to have the exclusive right to broadcast any of the contests, both in radio and television, and the exclusive right to arrange for the production and distribution of motion picture films of said contests.

22. Thereafter Joe Louis resigned his title as heavyweight champion of the world and, through agreements and understandings entered into among the defendants and with others, there were formed the defendant corporations IBC (N. Y.) and IBC (Ill.). The contracts referred to in paragraph 21 of this complaint were assigned to the defendant IBC (Ill.); $150,000 was paid to Joe Louis; and the elimination heavyweight championship contests were promoted by the defendants.

23. About May 27, 1949 IBC (N. Y.) acquired and eliminated the leading competing promoter of championship matches, Tournament of Champions, Inc. (hereinafter referred to as "champions"), a corporation organized in the State of New Jersey qualified to do business in New York, and the owner of all issued and outstanding stock of Sporting Events, Inc., a corporation of the State of New York licensed to promote boxing contests in the State of New York. Champions and Sporting Events, Inc. had been engaged in the promo-

tion of professional championship boxing. By said purchase the defendants, through IBC (N. Y.), acquired the following:

(a) An exclusive lease dated March 15, 1949, to promote professional boxing at the Polo Grounds, New York City, which was secured by a deposit of $50,000;

(b) A contract between Champions and Marcel Cerdan to engage in a world's championship middleweight bout with Tony Zale;

(c) A similar contract with Tony Zale to engage in such bout;

(d) A contract with Ray Robinson dated April 1949 fixing a match with Kid Gavilan for the world's welterweight championship.

24. At the time IBC (N. Y.) was formed, the defendant, through leases, agreements, understandings, and through stock ownership in corporations, possessed the exclusive right to promote professional boxing contests at the following arenas, which except for Yankee Stadium in New York City, are the principal arenas where professional championship boxing contests can successfully be presented:

Polo Grounds	New York
Madison Square Garden	New York
St. Nicholas Arena	New York
Chicago Stadium	Chicago
Detroit Olympia	Detroit
St. Louis Arena	St. Louis

25. On July 15, 1949, IBC (N. Y.) acquired the exclusive right to promote professional boxing

contests in the Yankee Stadium, and extended its exclusive rights to the Polo Grounds until December 31, 1952.

26. The defendants, after the formation of IBC (N. Y.) and IBC (Ill.), promoted professional championship boxing contests through these corporations in all weight divisions except the bantamweight and flyweight. In the promotion of each such contest, the contender for the title was required, as a condition of being afforded an opportunity to acquire the title, to agree with the promoter (either IBC (N. Y.) or IBC (Ill.)), among other things, that:

> (a) Should he be declared the winner and gain the title he would, for a period of three years (or five years in some cases), commencing from the time he was declared the winner, render his services as a professional boxer in title contests exclusively to the defendant promoter, and would engage in title contests only under its promotion or that of a party or corporation designated by it, or with which it is or may be affiliated;
>
> (b) Should he lose his title before the expiration of the three years, he agreed to box at least twice thereafter for the defendant promoter, or its designees; and
>
> (c) Should he win the title, he would engage in a return title contest with the deposed champion within 90 days under the promotion of the defendant promoter or its designee.

The defendants, through IBC (N. Y.) and IBC (Ill.), have promoted or participated in the pro-

motion of all but two of the 21 professional championship boxing contests held in the United States since June 1949.

V

Effects

28. The aforesaid combination and conspiracy, and monopolization, has had the following effects:

(a) Promoters of boxing contests, other than defendants, have been almost entirely excluded from engaging in the business of promoting professional championship boxing contests except with the consent of defendants;

(b) Boxers have been denied a chance to compete for world championships except under conditions that prevented them, if they won, from securing the benefits of competition among promoters desiring their services to present professional championship boxing contests; and

(c) The benefits of competition among promoters of professional championship boxing contests have been denied to:

(1) manufacturers and distributors of motion pictures of such contests;

(2) radio and television broadcasters and stations;

(3) the public attending such contests, seeing them in motion pictures or television, or hearing them by radio;

(4) the owners of arenas other than those owned by defendants.

Prayer

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendants and each of them have combined and conspired to restrain and to monopolize, and have restrained and monopolized, interstate and foreign trade and commerce, as hereinbefore alleged, in violation of Sections 1 and 2 of the Sherman Act, and that defendants be enjoined and restrained from continuing such violations or committing other violations of like character or effect.

2. That the Court adjudge and decree that the defendants have used the agreements referred to in paragraph 26 of this complaint and their financial and contractual interests in and control over arenas and organizations engaged in the promotion of professional championship boxing contests, as hereinabove described, unlawfully in instituting, effectuating and maintaining the aforesaid violations of Sections 1 and 2 of the Sherman Act.

3. That the Court order and direct the cancellation and termination of the agreements referred to in paragraph 26 of this complaint, and that the defendants be enjoined and restrained from enforcing such agreements and from entering into any agreements of like character or effect.

4. That defendant Garden be enjoined from leasing its arena exclusively for professional championship boxing contests to any promoter of such con-

tests, and from discriminating against any promoter desiring to lease said arena for a professional championship boxing contest.

5. That defendants Norris and Wirtz be ordered and directed to cause the arenas listed in paragraph 24 of this complaint, as long as any of such arenas are controlled by these defendants, directly or indirectly, to refrain from leasing their facilities exclusively for professional championship boxing contests to any promoter of such contests, and to refrain from discriminating against any promoter desiring to lease any of such facilities for a professional championship boxing contest.

6. That the Court enter such further orders regarding the aforesaid interests in and control over arenas and organizations engaged in the promotion of professional championship boxing contests as may be necessary and appropriate in order to dissipate the effects of the violations alleged herein and to restore free and open competition in the trade and commerce in the promotion, exhibition, broadcasting, telecasting, and motion picture production and distribution of professional championship boxing contests.

7. That pursuant to Section 5 of the Sherman Act, an order be made and entered herein requiring such of the defendants as are not within this District to be brought before the Court in this proceeding as parties defendant, and directing the Marshals of the Districts in which they severally reside or are found to serve the summons upon them.

8. That the plaintiff have such other, further and different relief as the nature of the case may re-

quire and the Court may deem just and proper in the premises.

9. That the plaintiff recover its taxable costs.

Dated: New York, N.Y. March 17, 1952.

(S.) J. HOWARD MCGRATH,
Attorney General.

(S.) H. G. MORISON,
Assistant Attorney General.

(S.) MYLES J. LANE,
United States Attorney.

(S.) MELVILLE C. WILLIAMS,
(per HL)

(S.) HAROLD LASSER,
Special Assistants to the Attorney General.

(S.) HAROLD J. MCAULEY,
(per HL)
Trial Attorney.

APPENDIX B

Paragraph 16(a) of Complaint, as Added thereto by Stipulation

16(a). A promoter of a professional championship fight usually derives substantially all of his revenue from two sources: (a) sale of tickets of admission and (b) sale of rights to telecast, broadcast and produce and distribute motion pictures of the fight. In such fights, sale of television, radio and motion picture rights account for a substantial proportion of the promoter's total revenue. Since 1949 sale of these rights has represented, on the average,

over 25% of the total revenue derived from championship fights, and has exceeded, in some instances, the revenue received from sale of tickets of admission. With the progressive and continuing expansion of television facilities, the proportion of the promoter's total revenue derived from television, radio and motion pictures, has been on an ascending curve, in relation to revenue derived from sale of tickets of admission. In the Marciano-Wolcott heavyweight championship fight of May 15, 1953, at Chicago, Illinois, promoted by defendants IBC (N. Y.), IBC (Ill.), James D. Norris and Arthur M. Wirtz, the promoters' receipts from sale of tickets of admission were, after federal admission taxes, $253,462.37, while their television, radio and motion picture revenue was approximately $300,000.

APPENDIX C

No. 21071

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, PLAINTIFF

against

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., A CORPORATION OF NEW YORK; INTERNATIONAL BOXING CLUB, A CORPORATION OF ILLINOIS; MADISON SQUARE GARDEN CORPORATION, A CORPORATION OF NEW YORK; JAMES D. NORRIS; AND ARTHUR M. WIRTZ, DEFENDANTS

MEMORANDUM

Civ. 74-81

(Filed Apr. 23, 1954. U. S. District Court S. D. of N. Y.)

NOONAN, D. J.:

On February 4, 1954, this court granted a motion made by the respondents to dismiss the complaint in this action for lack of jurisdiction of the subject matter of the action and for failure to state a claim upon which relief could be granted. This decision was rendered from the bench after oral argument, and an order entered February 8, 1954, pursuant to that decision, is now the subject of an appeal to the Supreme Court of the United States.

Despite the fact that the order itself states that the decision of the court was based on "* * * the summons and complaint and the Marshal's return

herein, the stipulation dated January 7, 1954 amending the complaint herein, the notice of motion dated December 2, 1953, and after hearing counsel * * *" (for both sides), the plaintiff seeks to include two other items in the praecipe. These two items, which are the subject of this motion to strike, are (1) the answers of the parties, and (2) the papers connected with an earlier motion for a preference.

Two specific problems are thus before this court: whether these two items are properly a part of the record; and, if not, whether this court has the authority to strike them.

On the first question, it is the opinion of this court that the items attacked are not properly part of the "record" for purposes of appeal. They did not form a part of the papers on which the decision was based nor was reference made to them on the argument. Although they were in the file of the case, they were never "before" the court during the course of the argument on the motion to dismiss.

The purpose of an appeal is to correct an error or errors made in the court below. In the instant case, that would entail a showing that the complaint in the action does state a claim upon which relief could be granted, and that this court does have jurisdiction over the subject matter. Unless both grounds for dismissal are found to be in error, the action must stand as dismissed.

Looking to the question of whether or not the complaint states a claim upon which relief can be granted, it is clear that neither answers, nor affidavits filed in connection with an unrelated motion, can bear out the sufficiency of the complaint. It must stand or fall on its own merits.

Both because these matters were never before this court when it was called upon to make its decision, and because they are not relevant to the sufficiency of the complaint, the inclusion of these disputed items in the praecipe is neither necessary nor proper. They do not form a material part of the record, nor do they properly reflect what occurred in this court.

Accordingly, it is the opinion of this court that the motion to strike should be granted if this court has the power so to do.

Rule 10 (2) of the Revised Rules of the Supreme Court of the United States (Title 28, U. S. Code) provides that the clerk of the lower court shall forward to the Supreme Court * * * a true copy of the material parts of the record * * *. The praecipe is authorized to enable the clerk to do so and * * * for the purpose of reducing the size of transcripts and eliminating all papers not necessary to the consideration of the questions to be reviewed * * *. The rule then goes on to incorporate by reference Sections (c), (e), and (h) of Rule 75 and Rule 76 of the Rules of Civil Procedure (Title 28 U. S. Code).

Of those portions of Rule 75 and Rule 76 of the Rules of Civil Procedure incorporated by reference into Rule 10 of the Supreme Court Rules, only Rules 75 (e) and (h) are applicable to the instant situation.

Rule 75 (e) entitled "Record To Be Abbreviated", opens with the sentence "All matter not essential to the decision of the questions presented by the appeal shall be omitted."

Rule 75 (h) is entitled "Power of Court to Correct or Modify Record" and provides that "* * *

if any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth."

It is essentially the wording of this last paragraph on which rests the authority of this court to grant the motion to strike the disputed items from the praecipe.

In 1886, in the case of *Hoe v. Kahler,* Circ. Ct. S. D. N. Y., 27 Fed. 145, 146, the court stated, "* * * a direction of this court in a doubtful case, where the clerk is requested to insert in the transcript by one party what he is requested to leave out by the other, would seem to be proper."

In the case of *U. S. v. City of Brookhaven,* 1943, 134 F. 2d 442, 446, rehearing denied, the court, referring to the inclusion in the record on appeal of a deposition taken, but never introduced into evidence in the lower court, stated:

> "Unless someone offered it in evidence on the trial it was not evidence in the case, nor was it proper to be transmitted as such with the record on appeal. When designated by appellees to be certified and sent up as a part of such record, appellant should have applied to the district court under the first sentence of Rule 75 (h) to have the deposition excluded as not having been introduced and considered in the trial."

In the instant case, the items in dispute were not introduced or considered in the determination of the motion. The appellees have moved to strike

them from the praecipe. For all of the above reasons, the motion is granted.

So ordered.

Dated, New York, N. Y., April 22, 1954.

GREGORY F. NOONAN,
U. S. D. J.

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